No. 83-790

In the Supreme Court of the United States

OCTOBER TERM, 1983

SOUTHERN STATES MOTOR INNS, INC., PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

REX E. LEE
Solicitor General
Department of Justice
Washington, D.C. 20530
(202) 633-2217

TABLE OF AUTHORITIES

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Petitioner challenges the court of appeals' holding as to the proper method of computing the interest rate to be charged on deferred payments of federal tax claims in bankruptcy. The decision below is correct. Petitioner does not allege (nor is there) a conflict among the circuits on the question presented. There is no basis for review by this Court.

1. Petitioner in October 1979 filed a voluntary petition for reorganization under Chapter 11 of the Bankruptcy Code (11 U.S.C. 1101 *et seq.*). The United States filed a proof of claim, in the amount of $412,145, for unpaid social security and withholding taxes. In its initial plan of reorganization, petitioner proposed to pay these taxes on a deferred basis, in five equal installments, but without any interest (Pet. App. 26). After the government objected to the plan

because it made no provision for payment of interest, petitioner amended it to provide for interest at the rate of 6% (*ibid.*). The government maintained its objection on the ground that a 6% interest rate was inadequate, and the bankruptcy court held a hearing on the matter (*id.* at 26-27). The government presented evidence that the minimum interest rate then payable on safe investments (such as Treasury obligations) was 14% (Pet. App. 27). But it expressed willingness to accept on petitioner's deferred tax payments an interest rate of 12%, the rate then payable under Section 6621 of the Internal Revenue Code of 1954 (26 U.S.C. (Supp. V)) on delinquent federal tax liabilities generally. The bankruptcy court held that the Section 6621 rate was the correct starting point as a matter of law, but determined that it should be reduced by 1% to take into account "the rehabilitation aspects" of the bankruptcy plan (Pet. App. 50-51). The bankruptcy court thus found 11% to be the proper figure, and the district court affirmed this finding as not clearly erroneous (Pet. App. 60).

The court of appeals reversed, holding that the method the bankruptcy court adopted to determine the appropriate interest rate was "inadequate" (Pet. App. 35). The court of appeals noted (*id.* at 31-32) that the interest rate used in a reorganization plan must result in the creditor's receiving, in deferred payments, an amount equal to the full present value of his claim. 11 U.S.C. 1129(a)(9)(C). The Section 6621 rate, while relevant in making this determination, was not in the court of appeals' view the only factor to be considered (Pet. App. 39). Rather, it was necessary to consider the " 'prevailing market rate for a loan of a term equal to the payout period, with due consideration of the quality of the security and the risk of subsequent default' " (Pet. App. 36, quoting 5 *Colliers on Bankruptcy* para. 1129.03, at 1129-65 (15th ed. 1982)). And once this "prevailing market rate" was determined, the court of appeals held, there was

no justification for reducing it on account of the plan's "rehabilitation aspects" (Pet. App. 41). While noting that the record could support a rate as high as 14%, the court concluded that the record in no event would "permit a finding that the appropriate interest rate was less than the 12% rate which [was] acceptable to [the government]" (Pet. App. 41-42). The Eleventh Circuit accordingly remanded the case with instructions that the district court apply a 12% rate, rather than an 11% rate, to petitioner's deferred payments of the government's tax claims (Pet. App. 42).

2. The court of appeals' decision is correct. Under Section 1129(a)(9)(C) of the Bankruptcy Code, a debtor that defers payment of a priority tax claim must provide in its reorganization plan for cash payments having "a value, as of the effective date of the plan, equal to the allowed amount of such claim." The legislative history reveals Congress's intent that "equal value" is to be achieved by applying an interest rate to the deferred payments that will "recogniz[e] the time-value of money." See, *e.g.*, H.R. Rep. 95-595, 95th Cong., 1st Sess. 408, 412, 413-414 (1977); 124 Cong. Rec. 32406 (1978) (remarks of Rep. Edwards); 124 Cong. Rec. 34006 (1978) (remarks of Sen. DeConcini). See also *In re Burgess Wholesale Mfg. Opticians, Inc.*, No. 82-2258 (7th Cir. Nov. 30, 1983), slip. op. 2-3. Accordingly, to determine the present value of a claim, reference must be made to market rates of interest on extensions of credit of a similar type, duration and risk. Cf. *Memphis Bank & Trust Co.* v. *Whitman*, 692 F.2d 427, 431 (6th Cir. 1982) (holding that a creditor who extended purchase money credit secured by an automobile was entitled under 11 U.S.C. 1325(a)(5)(B) to interest at the "current market rate * * * used for similar loans in the region"). See generally 5 *Collier*

on Bankruptcy para. 1129.03[1] (15th ed. 1983).[1] In the case of a federal tax claim, the rate established by Section 6621 of the Internal Revenue Code—the rate payable by taxpayers on delinquent tax liabilities generally—is surely a reasonable guidepost as to the "prevailing market rate." Although (as the court of appeals noted) other guideposts may also be relevant, and may in certain circumstances dictate a higher rate, the government was willing to accept the Section 6621 rate here, and there was thus no reason for the court of appeals to explore such other options.

Petitioner contends (Pet. 14-15) that the court of appeals, having set forth the governing legal standard, should have remanded to the district court for determination of the proper interest rate on the facts of this case. As this Court has recognized, however, where a trial court's findings are infirm because it applied an erroneous legal standard, those findings may be set aside by the appellate court, and a remand for further factfinding is not necessary if the record permits only one resolution of the issue. See *Pullman-Standard* v. *Swint*, 456 U.S. 273, 287 (1982). Here, the court of appeals correctly determined (Pet. App. 39-41) that the bankruptcy court had erred as a matter of law in reducing the "prevailing market rate" by 1% on account of the plan's "rehabilitation aspects."[2] The court of appeals

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[1]The cases petitioner cites (Pet. 11-14) to show disagreement among the bankruptcy courts about the proper method of computing the rate of interest on deferred tax payments were decided before the court below and the Sixth Ciricuit in *Memphis Bank* issued their opinions.

[2]The bankruptcy court (Pet. App. 27-28) cited no authority for this arbitrary mark-down. While it is of course true that the bankruptcy law has "rehabilitation aspects," neither the language nor the legislative history of 11 U.S.C. 1129(a)(9)(C) suggests that these objectives are to be realized by applying an artificially low interest rate to priority tax claims (or by discounting the priority claims themselves). Rather, Congress expressed its intention that a creditor receive in deferred payments an amount equal to the full present value of the claim allowed.

likewise concluded (*id.* at 42) that the record would not permit a finding that the "prevailing market rate" was less than 12%. Those determinations having been made, there was nothing left for the district court to do on the issue, and the case was properly remanded with instructions that it apply the 12% rate sought by the government.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

REX E. LEE
Solicitor General

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